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82-6249

NO. 236582

IN THE SUPREME COURT OF THE UNITED STATES

IN RE:
GILBERT G. VELILLA
Appellant
VS.
U.T.C./HAMILTON STANDARD DIVISION,
LIBERTY MUTUAL INSURANCE COMPANY,
WORKERS' COMPENSATION COMMISSIONER,
ET AL
Appellees

MARCH 14, 1983

MOTION TO DISMISS OR AFFIRM

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NO. 236582

IN THE SUPREME COURT OF THE UNITED STATES

IN RE:	)
GILBERT G. VELILLA	)
Appellant	)
VS.	)
U.T.C./HAMILTON STANDARD DIVISION,	)
LIBERTY MUTUAL INSURANCE COMPANY,	)
WORKERS' COMPENSATION COMMISSIONER,	)
ET AL	)
Appellees	)

MARCH 14, 1983

MOTION TO DISMISS OR AFFIRM

Pursuant to the Supreme Court Rules 16 and 46(5), the appellees, UTC/Hamilton Standard Division and Liberty Mutual Insurance Company hereby respectfully request that this Court either dismiss the appeal of appellant, Gilbert G. Velilla or affirm the decision of the Supreme Court of the State of Connecticut.

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STATEMENT OF THE ISSUES

1. Issue re Motion to Dismiss
   Does the United States Supreme Court have jurisdiction over this appeal pursuant to either 28 USC Section 1251 or 28 USC Section 1343(3) as espoused by appellant in his jurisdictional statement?

2. Issue re Motion to Affirm
   Did the Connecticut Supreme Court err in dismissing appellant's Motion for Ruling?

Statement of the Case

Appellant was injured on August 23, 1974 during the course of his employment and he was out of work ten (10) days during which time he received Workers' Compensation payments pursuant to the Workers' Compensation Act of the State of Connecticut. Subsequent to that time, appellant developed medical complaints which he claimed were related to his August 23, 1974 injury.

In a formal compensation hearing held on July 30, 1979, at which appellant was represented by counsel, the Workers' Compensation Commissioner found the subsequent complaint to be unrelated to his 1974 injury and denied an award of further compensation. Appellant appealed the Commissioner's decision to the Superior Court of the State of Connecticut, which Court denied his appeal. Appellant then filed a Petition for Certiorari with the Supreme Court of the State of Connecticut which was denied on November 20, 1980.

In January of 1981, appellant commenced an action in the United States District Court of the State of Connecticut, alleging that the laws of the State of Connecticut and the actions of the Connecticut Courts and Workers' Compensation Division denied him of his Constitutional and civil rights. By ruling dated June 12, 1981 in the United States District Court, Clarie, J., dismissed appellant's complaint because it failed to state a claim upon which relief could be granted. Appellant then appealed to the Second Circuit Court of Appeals, which Court affirmed the ruling of Judge Clarie. Appellant next petitioned to the Court of Appeals for hearing en banc which petition was denied.

Appellant next filed a Petition for a Writ of Mandamus in the United States Supreme Court. Said Petition for a Writ of Mandamus was denied on October 4, 1982. Appellant then filed a Petition for Rehearing in the United States Supreme Court which Petition was

denied on November 15, 1982. Appellant also petitioned for Certiorari but said Petition was returned because it was not timely filed.

Immediately subsequent to said denials by the United States Supreme Court, appellant filed a Motion for Ruling with the Supreme Court of the State of Connecticut. Appellee requested that the Connecticut Supreme Court dismiss said Motion for Ruling on the ground that appellant's case was not presently pending before the Supreme Court of the State of Connecticut or any other Court in the State of Connecticut. Said Motion was dismissed by the Supreme Court of the State of Connecticut on December 21, 1982.

Appellant next filed a Motion for Reconsideration. Appellee objected to said Motion on the ground that since the Supreme Court did not have jurisdiction over the original Motion for Ruling it could not consider plaintiff's Motion for Reconsideration. Accordingly, said Motion for Reconsideration was denied on January 7, 1983.

Summary of the Argument

This Court does not have jurisdiction over the present matter pursuant to 28 USC Section 1251 or 28 USC Section 1343 as claimed by the appellant as neither one of those Statutes confers appellate jurisdiction upon the Supreme Court. Furthermore, this Court does not have jurisdiction over the present matter pursuant to 28 USC Section 1257 because the decision of the Court below did not involve any question of Federal Law.

To the extent this Court may choose to exercise jurisdiction over this case, the decision of the Supreme Court of the State of Connecticut should be affirmed because a State Appellate Court does not have power to hear a Motion on a case which is not pending in the Court system of that State.

ARGUMENT

I. The Supreme Court does not have jurisdiction over this appeal and said appeal should be dismissed.

Appellant is appealing directly from a Motion for Ruling which was dismissed by the Connecticut Supreme Court and from a denial of his Motion for Reconsideration of that dismissal. Appellant claims that the United States Supreme Court has jurisdiction over this appeal by virtue of 28 USC Section 1251 and 28 USC Section 1343(3). Appellant's Jurisdictional Statement at Page 18. Clearly, this Court has jurisdiction under neither of these provisions. 28 USC Section 1251 provides:

> ORIGINAL JURISDICTION
> (a) The Supreme Court shall have original and exclusive jurisdiction of:
> (1) All controversies between two or more States;
> (2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.
> (b) The Supreme Court shall have original but not exclusive jurisdiction of:
> (1) All actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties;
> (2) All controversies between the United States and a State;
> (3) All actions or proceedings by a State against the citizens of another State or against aliens.

This statute confers original jurisdiction upon the Supreme Court not appellate jurisdiction, and thus does not apply to this case. Even if it did, the State is not, and never has been, a plaintiff in the underlying action. Thus, Section 1251 does not provide this Court with jurisdiction over the present appeal.

28 USC Section 1343 does not even apply to the issue of jurisdiction of the United States Supreme Court. It applies to the jurisdiction of the District Court and thus does not provide the Supreme Court with jurisdiction over this appeal.

To the extent that 28 USC Section 1257 may apply, it is clear that the only issue on appeal is whether the Connecticut Supreme Court's dismissal of appellant's Motion for Ruling was in error. As will be explained, that decision did not present any Federal question.

As can be seen from the history of the present case, this case has been pursued through the State Court system, culminating in the Connecticut Supreme Court's denial of Certiorari on November 20, 1980 and then through the Federal Court system culminating in the United States Supreme Court's denial of a Petition for Rehearing on November 15, 1982.

Subsequent to the denial of Certiorari and subsequent to the denial of the Petition for Rehearing by this Court, appellant filed a Motion for Ruling in the Connecticut Supreme Court essentially asking it to reconsider the entire case. Appellees, UTC/Hamilton Standard Division and Liberty Mutual Insurance Company, moved that the Motion for Ruling be dismissed because:

> "The appellant's case is not presently before the Supreme Court of the State of Connecticut, or any other Court in the State of Connecticut. The case has already been fully litigated in the State Court system, which litigation culminated in the denial of the Petition for Certiorari filed by appellant. Therefore, this Court does not have jurisdiction to hear this Motion for Ruling and said Motion should be dismissed." Motion 3098 Compliance - Response to "Appellants" Motion for Ruling Dated November 24, 1982. (A copy of which Motion is attached hereto and marked Exhibit A).

The Connecticut Supreme Court, without opinion, dismissed the Motion for Ruling. Appellant then requested reconsideration which appellees opposed for the reason that the Court was without jurisdiction to entertain the motion. Accordingly, the Motion was denied.

Clearly, the Connecticut Supreme Court dismissed the Motion for Ruling because there was no case involving the parties pending

in the State Court system. Appellant was essentially trying to commence, by Motion, an action at the Supreme Court level. The Connecticut Supreme Court's decision did not involve any question of federal law and this Court thus does not have jurisdiction over this appeal pursuant to 28 USC Section 1257.

II. If the Supreme Court exercises jurisdiction over this case then the decision of the Connecticut Supreme Court must nevertheless, be affirmed.

As explained above, the Connecticut Supreme Court dismissed the Motion for Ruling because there was no case pending in the State Court system from which the Motion could be brought.[1] In said Motion, Mr. Velilla referred to himself as "appellant" and the Connecticut Supreme Court obviously treated said Motion as an appellate Motion. Obviously, an appeal cannot be brought from a case which is not pending in the lower Court system and said dismissal was properly granted.

1. A Motion for Ruling is not a Motion addressed or in any way referred to in the Connecticut Practice Book.

CONCLUSION

This Court does not have jurisdiction over this appeal pursuant to 28 USC Section 1251 because said Statute does not confer appellate jurisdiction upon the Supreme Court, and even if it did the case meets none of the jurisdictional criteria set forth therein.

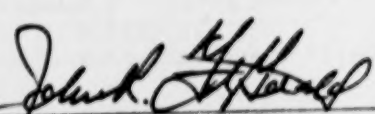
This Court does not have jurisdiction over this appeal pursuant to 28 USC Section 1343 because said Statute applies to the jurisdiction of the District Court and not of the Supreme Court.

This Court does not have jurisdiction over this appeal pursuant to 28 USC Section 1257 because the decision of the Court below did not involve any question of Federal Law.

To the extent that this Court may choose to exercise jurisdiction over this case, the decision of the Connecticut Supreme Court must be affirmed because an Appellate Court does not have power to hear a Motion from a case which is not pending in its lower Court system.

WHEREFORE, appellees, UTC/Hamilton Standard Division, Liberty Mutual Insurance Company, respectfully request that this Court dismiss this appeal or affirm the decision of the Supreme Court of the State of Connecticut.

DEFENDANT, UTC/HAMILTON STANDARD DIVISION, AND LIBERTY MUTUAL INSURANCE COMPANY,

BY 

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Appellant	)
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LIBERTY MUTUAL INSURANCE COMPANY,	)
WORKERS' COMPENSATION COMMISSIONER,	)
ET AL	)
Appellees	)

MARCH 14, 1983

CERTIFICATE OF SERVICE

I, John R. FitzGerald, a member of the bar of the Supreme Court of the United States and counsel for UTC/Hamilton Standard Division and Liberty Mutual Insurance Company, appellees, hereby certify that on March 14, 1983, and pursuant to Rule 28, Rules of the Supreme Court, I served one copy of the attached Motion to Dismiss or Affirm on each of the parties herein as follows:

On March 14, 1983 to Appellant, Gilbert G. Velilla by depositing such copy in the U. S. Post Office, Hartford, Connecticut, with first class postage prepaid, properly addressed to the post office address of the above named at 719 Belmont Avenue, Springfield, MA 01108; and

On March 14, 1983 to Thomas Clifford, III, Esquire, Assistant Attorney General for the State of Connecticut, attorneys for respondent, Workers' Compensation Commissioner by depositing such copy in the U. S. Post Office, Hartford, Connecticut, with first class postage prepaid, properly addressed to the above named at 30 Trinity Street, Hartford, Connecticut 06103.

All parties required to be served have been served.

Dated: March 14, 1983

John R. FitzGerald of
Howard, Kohn, Sprague & FitzGerald

NO: 236582

SUPREME COURT

GILBERT G. VELILLA

JUDICIAL DISTRICT OF
HARTFORD/NEW BRITAIN

VS.

AT HARTFORD

U.T.C./HAMILTON STANDARD DIVISION
LIBERTY MUTUAL INSURANCE COMPANY
WORKMEN'S COMPENSATION COMMISSIONER
ET AL

DECEMBER 10, 1982

MOTION 3098 COMPLIANCE - RESPONSE TO "APPELLANT'S" MOTION FOR RULING DATED NOVEMBER 24, 1982

BRIEF HISTORY OF THE CASE:

Appellant was injured on August 23, 1974 during the course of his employment and was out of work ten days during which time he received workmen's compensation payments pursuant to the Workmen's Compensation Act of the State of Connecticut. Subsequent to this time, appellant developed medical complaints which he claimed were related to his August 23, 1974 injury. In a formal compensation hearing held on July 30, 1979, at which appellant was represented by counsel, the workmen's compensation commissioner found his subsequent complaints to be unrelated to his 1974 injury and denied an award of further compensation. Appellant appealed the commissioner's decision to the Superior Court of the State of Connecticut, which court denied his appeal. Appellant then filed a Petition for Certiorari with the Supreme Court of the State of

Connecticut, which was denied on November 20, 1980. In January of 1981, appellant commenced action in the United States District Court of the State of Connecticut, alleging that the laws of the State of Connecticut and the actions of the Connecticut courts and workmen's compensation division denied him of his constitutional civil rights. By ruling dated June 12, 1981, the U. S. District Court, District of Connecticut, Clarie, J., dismissed appellant's complaint because it failed to state a claim upon which relief could be granted. Appellant then appealed to the Second Circuit Court of Appeals which court affirmed the ruling of Judge Clarie. Appellant next petitioned the Court of Appeals for a hearing em banc which petition was denied.

Appellant next filed a petition for a writ of mandamus in the United States Supreme Court. Said petition for a writ of mandamus was denied on October 4, 1982. Appellant next filed a petition for rehearing in the United States Supreme Court which petition was denied on November 15, 1982.

Immediately subsequent to said denial by the United States Supreme Court, appellant filed this Motion for Ruling.

HOWARD, KOHN, SPRAGUE & FITZGERALD • ATTORNEYS AT LAW
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STATEMENT OF THE SPECIFIC FACTS ON WHICH THE OPPOSING PARTY RELIES.

Appellant was injured on August 23, 1974 and followed the appropriate legal channels through the workmen's compensation division of the Superior Court and the Supreme Court of the State of Connecticut. The Supreme Court of the State of Connecticut denied appellant's Petition for Certiorari on November 20, 1980.

LEGAL GROUNDS RELIED UPON.

The appellant's case is not presently before the Supreme Court of the State of Connecticut, or any other court in the State of Connecticut. The case has already been fully litigated in the State court system, which litigation culminated in a denial of the Petition for Certiorari filed by the appellant. Therefore this court does not have jurisdiction to hear this Motion for Ruling and said motion should be dismissed.

WHEREFORE appellees, U.T.C. Hamilton Standard Division and Liberty Mutual Insurance Company respectfully request that the

appellant's Motion for Ruling be dismissed for lack of jurisdiction.

APPELLEES
U.T.C. HAMILTON STANDARD DIVISION
LIBERTY MUTUAL INSURANCE CO.

BY _____
Richard S. Bartlett
Howard, Kohn, Sprague & FitzGerald
Their Attorneys

CERTIFICATION

I hereby certify that a copy of the above was mailed on the above date pursuant to pro se parties of record.

_____
Richard S. Bartlett
Howard, Kohn, Sprague & FitzGerald

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